

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1424

Introduced by Assembly Member Saldana

February 22, 2005

An act to amend Section 1775.9 of the Insurance Code, and *to amend* Sections 12491, 12493, 12494, 12495, and 12636.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, as amended, Saldana. Taxation: delinquent tax liabilities: surplus line brokers.

Existing law imposes a gross premiums tax on, among others, surplus line brokers, which is measured by gross premiums less return premiums with certain exceptions, and provides for the processing and auditing of tax returns by the Department of Insurance, for the issuing of deficiency assessments, and the processing of petitions and refunds by the State Board of Equalization. Existing law provides that the tax levied upon an insurer, as specified, is a lien upon all property owned by the insurer, imposes a penalty on any insurer who fails to pay any tax, as specified, and disallows a corporate dissolution or bankruptcy discharge unless all tax obligations are paid.

This bill would clarify that surplus line brokers are subject to these same lien provisions that apply to other insurers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1775.9 of the Insurance Code is amended to read:

1775.9. (a) If the commissioner determines that the amount of tax reported by the surplus line broker is less than the tax disclosed by the commissioner's examination, the commissioner shall permit the surplus line broker to provide additional information demonstrating that the surplus line broker owes a lesser amount. If within 60 days, or such additional time as the commissioner deems appropriate, the commissioner and the surplus line broker cannot agree on the amount owed, the commissioner shall propose in writing to the State Board of Equalization a deficiency assessment for the difference pursuant to subdivision (b) of Section 12422 of the Revenue and Taxation Code.

(b) Section 12636.5, Article 3 (commencing with Section 12421) and Article 4 (commencing with Section 12491) of Chapter 4 of, and Article 1 (commencing with Section 12951) and Article 2 (commencing with Section 12977) of Chapter 7 of, Part 7 of Division 2 of the Revenue and Taxation Code shall apply to surplus line brokers, except where inconsistent with the provisions of this chapter, in which case this chapter shall govern.

SEC. 2. Section 12491 of the Revenue and Taxation Code is amended to read:

12491. (a) Every tax levied upon an insurer under the provisions of Article XIII of the Constitution and of this part is a lien upon all property and franchises of every kind and nature belonging to the insurer, and has the effect of a judgment against the insurer.

(b) (1) Every tax levied upon a surplus line broker under the provisions of Part 7.5 (commencing with Section 13201) of Division 2 is a lien upon all property and franchises of every kind and nature belonging to the surplus line broker, and has the effect of a judgment against the surplus line broker.

(2) *A lien levied pursuant to this subdivision shall not exceed the amount of unpaid tax collected by the surplus line broker.*

SEC. 3. Section 12493 of the Revenue and Taxation Code is amended to read:

1 12493. Every lien has the effect of an execution duly levied
2 against all property of a delinquent insurer or surplus line broker.

3 SEC. 4. Section 12494 of the Revenue and Taxation Code is
4 amended to read:

5 12494. No judgment is satisfied nor lien removed until either:

6 (a) The taxes, interest, penalties, and costs are paid.

7 (b) The insurer's or surplus line broker's property is sold for
8 the payment thereof.

9 SEC. 5. Section 12495 of the Revenue and Taxation Code is
10 amended to read:

11 12495. No court shall make and enter a final discharge in
12 bankruptcy or decree of dissolution, nor shall any county clerk or
13 the Secretary of State file a discharge, decree, or any other
14 document by which the term of existence of a corporation or
15 surplus line broker's business is reduced, or a surplus line
16 broker's assets are transferred to a new owner until all taxes,
17 interest, penalties, and costs are paid and discharged.

18 SEC. 6. Section 12636.5 of the Revenue and Taxation Code
19 is amended to read:

20 12636.5. Every payment on an insurer's or surplus line
21 broker's delinquent annual tax shall be applied as follows:

22 (a) First, to any interest due on the tax.

23 (b) Second, to any penalty imposed by this part.

24 (c) The balance, if any, to the tax itself.